

APPLICANT:
APC Realty and Equipment Company, LLC

CO-APPLICANT:
The Century Lions Club of Edgewood, Inc.

REQUEST: A special exception to allow
a communications tower in the B2 District

HEARING DATE: July 6, 2005

BEFORE THE
ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5483

ZONING HEARING EXAMINER'S DECISION

APPLICANT: APC Realty and Equipment Company, LLC

CO-APPLICANT: The Century Lions Club of Edgewood, Inc.

LOCATION: 2104 Trimble Road, Edgewood
Tax Map: 66 / Grid: 4A / Parcel: 347
First Election District (1st)

ZONING: B2 / Community Business District

REQUEST: A special exception pursuant to Sections 267-53.4(C) and 267-53.6 of the Harford County Code to allow a communications tower in the B2 District.

TESTIMONY AND EVIDENCE OF RECORD:

APC Realty and Equipment Company, LLC and The Century Lions Club of Edgewood, Inc. (sometimes hereinafter referred to, collectively, as "Applicant"), request a special exception to allow the construction of a 100 foot high monopole communications tower in a B2 Zoning District.

The subject property is located at 2104 Trimble Road, Edgewood, Maryland and is approximately 5.92 acres in size. The property is improved by a two-story building used by The Century Lions Club of Edgewood, Inc., and a building occupied by the Harford County Health Department, a dental office, and a church. The specific area of the overall site proposed for the tower is vacant, in grass, and is adjacent to an existing area of mature trees. The property will be accessed by Trimble Road, although frontage also exists along Edgewood Road.

According to the Harford County Department of Planning and Zoning Staff Report, existing land uses in this area are consistent with the 2004 Master Plan and contain a mixture of residential, institutional and commercial uses. The property is designated as Medium Intensity on the Harford County Land Use Map, allowing a variety of uses, including "grocery stores, variety stores and other commercial uses. . .".

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As described by the Application, the facility will consist of a 100 foot monopole, to be located within an enclosed 6 foot high chain link fenced equipment storage area. The facility will be used by Sprint PCS in order to fill a wireless coverage “gap” in the Edgewood and Aberdeen areas. The proposed facility will be unmanned, but will require periodic maintenance. No lights will be placed on the monopole. All necessary setbacks will be observed.

First for the Applicant was called Garinder Singh, who identified himself as a radio frequency engineer who has performed work on the proposed site and has had experience in designing other wireless communication sites. Mr. Singh has contributed to the design of the proposed structure, which is to be a 100 feet high monopole structure to be used by Sprint Communications. Sprint is a Federal Communication Commission (“FCC”) licensee which is legally obliged to provide wireless communication service.

The proposed monopole will fill a coverage gap in the Edgewood and Aberdeen areas. Mr. Singh stated that Sprint provides no coverage in the particular area in which the proposed facility will be located. In support of his testimony was offered a series of coverage maps. The map marked as Applicant’s Exhibit No. 1 shows no coverage in the Edgewood/Aberdeen area without the proposed tower. According to Mr. Singh, this map demonstrates the large gap which exists throughout this area. It can be observed from the map that the proposed site will be located in what is labeled a “very poor” coverage area, which borders on an area of “no coverage”. According to Mr. Singh, a “very poor” coverage is unacceptable and is not considered adequate coverage by the FCC.

The next coverage map, marked Applicant’s Exhibit No. 2, shows the same coverage area with the proposed site in place and operating. Much of the area now changes to a “very good” reception area. Mr. Singh testified that the new site will allow acceptable coverage to hook-up to those areas which presently have adequate coverage.

According to Mr. Singh, the Applicant has identified only one possible existing site on which to locate its antennas. That site is known as the Crown Castle site, located approximately 1.2 miles to the west of the proposed site. In order to determine if this site is acceptable, the Applicant hung an antenna approximately 160 feet high on the Crown Castle tower. Signals were then measured and recorded during a drive test, the details of which are shown by that map marked as Applicant’s Exhibit No. 3. The drive test demonstrated that a signal from an antenna on the Crown Castle tower site would not be adequate to fill the coverage gap experienced by Sprint. Accordingly, the Crown Castle site was rejected.

According to Mr. Singh no other existing structures were available on which Sprint could hang its antennas.

Mr. Singh and his team also did a drive test in order to determine if a tower of less than 100 feet in height at the proposed location would meet Sprint’s needs. The results of the drive test were that a tower of less than 100 feet would not fill the coverage gap.

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Next for the Applicant testified Howard Zechiel. Mr. Zechiel was involved in the search for and identification of the subject property as a proposed wireless communications tower site. Mr. Zechiel is familiar with the characteristics of a site necessary to support a wireless communications tower and of the search methods which are employed in determining an appropriate location for such a tower.

Mr. Zechiel performed a search of the area in which an additional location is necessary in order to meet Sprint's coverage needs. He identified only one structure over 75 feet in this search area ("Search Ring"). This was an approximately 100 foot water tower to the northwest of the subject property. The Applicant did not make an effort to secure permission to locate an antenna on this tower as it is located on grounds owned by the United States Government and used as a part of Aberdeen Proving Ground. Furthermore, Mr. Zechiel understands that the water tower is to be demolished. Mr. Zechiel was able to identify no other structure of an appropriate height within the search area, except for the Crown Castle tower earlier referred to by Mr. Singh is located outside of the identified Search Ring.

Being unable to identify an existing tower which could host Sprint's antennas, Mr. Zechiel's next preference was to locate a parcel of commercially zoned land on which the tower could be located. In Harford County an appropriately zoned property would be B2.

In evaluating a particular site, Mr. Zechiel first determines if its siting is appropriate; it must be accessible to construction workers and equipment to construct the facility; it must be large enough to support the facility; and the owner must be willing to lease space. Mr. Zechiel determined that the proposed site meets all search criteria. The property is almost 6 acres in size. It contains an abundance of natural screening. Institutional uses exist on two sides of the subject property which add additional buffer. The location itself meets the coverage issue of the ultimate user. Perhaps just as significantly, according to Mr. Zechiel, the subject property itself is at a somewhat higher natural elevation than surrounding properties which would allow the Applicant to construct a monopole no higher than 100 feet, which is substantially shorter than many other monopoles erected by the industry. Lastly, the owner of the subject property is willing to enter into a lease with the Applicant. For these reasons, Mr. Zechiel finds the proposed site as being an appropriate one.

Mr. Zechiel also stated that the Applicant performed a balloon test by placing a crane on site and making observations from off-site locations.

The FAA has made a determination that the proposed monopole will not be a hazard to air navigation. The FAA's determination is marked as Applicant's Exhibit No. 5 in the file.

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Next testified Anthony McClune for the Harford County Department of Planning and Zoning. Mr. McClune, reiterating the findings of the Staff Report, indicated that the application meets or exceeds all standards of Code Section 267-9I. He believes there will be no adverse impact on any adjoining property, given the buffering on site and the size of the subject property. Furthermore, there should be no adverse impact on traffic. The proposal further will meet all of the requirements of Code Section 267-53.5(G). According to Mr. McClune, Harford County's Radio Frequency Engineer has determined that the request for this tower fills a gap in coverage, and the location appears to be a logical one for the tower. Furthermore, the tower's location does not interfere with the current microwave paths for the Public Safety radio system. A copy of Harford County's Radio Frequency Engineer's report is in the file as Attachment 11.

Mr. McClune indicated that the County's Radio Frequency Engineer had recommended that the County request additional information on the need for tower lighting under FAA guidelines. The Applicant accordingly submitted a letter from the FAA stating that the proposed tower would not interfere with air navigation and would accordingly not require lighting (Attachment 12).

The Department recommends approval of the requested special exception.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-53.4(C) of the Harford County Code, which states:

"C. Communications tower shall be allowed by special exception up to 199-feet, in the R, RR, R1, R2, VR, VB, B1, B2, and AG District."

The Applicant also requests a special exception to Section 267-53.6 of the Harford County Code which states:

"An Applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2, or AG Districts shall demonstrate that the request complies with the following conditions:

- A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*
- B. The Applicant has made a diligent attempt to locate the Applicant's antenna on an existing tower or nonresidential building or structure.*

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C. *The Applicant shall provide the following additional information in support of its application:*

- (1) *Photographs of existing site conditions;*
- (2) *Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*
- (3) *A map describing the topography of the site and the area within a one mile radius of the proposed tower.”*

Section 267-51 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Section 267-52 of the Harford County Code defines General regulations as:

- A. *Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. *A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. *Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. *The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*

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E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”

Section 267-9I of the Harford County Code, Limitations, Guides and Standards, is also applicable to this request and will be addressed below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant has located a relatively open, apparently under-utilized site, zoned B2, on which to locate a 100 foot wireless monopole and related equipment. The location of the pole itself will be approximately 150 feet from the northerly property line of the Subject Property, and approximately 150 feet from the westerly line. To both the west and the north along the property lines are located forested areas. While the Subject Property has access to both Edgewood Road (MD Route 755), and Trimble Road, the monopole will be setback at least 400 feet from each roadway.

While the neighborhood within which the monopole is to be located is a mixed commercial and residential neighborhood, the evidence of record, most particularly including Attachment 7B to the Staff Report, shows no residential neighbors within at least 300 feet of the monopole.

Furthermore, the Subject Property is now used for institutional purposes and commercial uses. The buildings housing these uses are, again, relatively far removed from the proposed site of the monopole. Furthermore, the monopole is, at 100 feet, much shorter than that which is allowed by Code, and is shorter than many if not most similar monopoles constructed in Harford County.

It would accordingly seem, based upon site characteristics, that the proposed site, if not an ideal one for such a structure, is certainly one which should cause little disruption or impact to its neighborhood.

Furthermore, as a special exception the proposed use is presumptively permitted in this particular zone, provided it meets all specific and general standards. Accordingly, it is first necessary to examine the specific standards set forth in Section 267-53.4C of the Harford County Code.

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Generally, communications towers up to 199 feet are allowed in a B2 District. The Applicant must, however, demonstrate that the request complies with the following conditions:

An Applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2, or AG Districts shall demonstrate that the request complies with the following conditions:

- A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*

As discussed above, the proposed monopole will be located on a relatively large parcel, to be sited at least 150 feet from the nearest property line or resident. The monopole will receive the benefit of being surrounded on both the north and westerly sides by forested areas which will help screen its visual impact. The general area is mixed residential and commercial, and the uses on the subject property are institutional and commercial. While the subject parcel has access to both Trimble Road and Edgewood Road, the tower itself is located at least 400 feet from each of the roads.

Accordingly, it is found that the proposed communications tower will have no material impact on the value, use or enjoyment on any adjoining parcel.

- B. The Applicant has made a diligent attempt to locate the Applicant's antenna on an existing tower or nonresidential building or structure.*

The Applicant's witnesses described their efforts to locate an alternate structure on which to affix the Applicant's antennas. Those witnesses testified they were able to locate only one structure with the required height. Radio frequency tests determined that an antenna located on that structure would not fill Sprint's coverage gap. There were no other available structures located by the Applicant, despite its efforts to do so.

Accordingly, it is found that the Applicant has made diligent efforts to locate the Applicant's antenna on an existing tower or a non-residential building or structure.

- C. The Applicant shall provide the following additional information in support of its application:*

- (1) Photographs of existing site conditions;*
- (2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*

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- (3) *A map describing the topography of the site and the area within a one mile radius of the proposed tower.*

The Applicant has fully complied with this requirement.

Accordingly, it is found that the Applicant has complied with the specific requirements of Code Section 267-53.4(C).

The Applicant is also subject to the requirements of Code Section 267-53.5, which is applicable to all communications towers. While much of this section relates to the actual construction of the tower, and includes design requirements, usage requirements, and compels removal in certain instances, this section also requires that the Applicant demonstrate a radio frequency need for the facility. The Applicant has, in fact, shown such a need by the testimony of his witnesses who concluded there exist no other available location possibilities in the search area. This section also requires that communication towers be structurally designed to accommodate co-location by three or more carriers. The Applicant had submitted that the structure shall be constructed in such a way to comply with this requirement.

The Applicant must also show compliance with the more general factors contained in Code Section 267-9I, Limitations, Guides and Standards. Those factors are detailed and discussed as follows:

- (1) *The number of persons living or working in the immediate area.*

As set forth above, the subject property is located in an area of mixed residential and commercial uses. The parcel of property on which the proposed use is to be located itself contains a mixture of commercial and institutional uses. Few residential dwellings are located in close proximity to the subject parcel, with most of the major uses in the neighborhood being commercial or institutional. Accordingly, there should be no impact on the number of persons living or working in the immediate area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

Pedestrian traffic is not an issue. The proposed tower itself should have no impact on traffic. After the initial construction period, the only access should be for regular maintenance and emergency workers, which should be minimal.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed monopole will fill a gap in wireless coverage provided by Sprint, a major wireless communications carrier. The Applicant suggests that Sprint is required to attain complete coverage in its service area and that the proposed monopole will help meet that requirement. The proposed special exception will accordingly help contribute to the growth and well being of both the local neighborhood and broader community.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed use will generate no odors, dust, gas, smoke, fumes, vibration, glare or noise.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Local and State Police will provide police protection. The local volunteer fire company will provide fire protection. Public water and sewer service is not necessary.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposed facility has been reviewed and approved by the Harford County Radio Frequency Engineer. The use is consistent with the Harford County Master Plan, and is a use principally permitted in the B2 zoning district, provided special and general requirements are met.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

There are two church properties which abut the subject property. The proposed monopole will be surrounded on two sides by mature forest growth and will be significantly removed from those church properties. Accordingly, the impact of the monopole on those institutional uses will be minor.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed tower's purpose is to improve wireless communications in the Edgewood/Aberdeen area. As such it is consistent with these purposes.

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- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

No potential environmental impact has been identified.

- (10) *The preservation of cultural and historic landmarks.*

No cultural or historic sites have been identified.

There is no evidence or, indeed, even a suggestion that the proposed monopole at the proposed site would have a greater impact as proposed, and where proposed, then it would if located somewhere else within the district. In fact, it appears that the proposed site, buffered as it is and removed as it is from adjoining roads and residences, and generally within an area of mixed commercial and institutional uses is, if not an ideal site, one which is surely better than most within the zone. The adverse impact of the proposal should be minimal if non-existent; its benefit to the community should be significant.

CONCLUSION:

Accordingly, it is recommended that the requested special exception be granted, subject to the following conditions:

1. A site plan be submitted for review and approval through the Development Advisory Committee (DAC).
2. The Applicants shall obtain all necessary permits and inspections for the proposed facility.
3. The Applicants shall construct the facility in general compliance with the Applicants' site plan.
4. That in addition to other applicable Code provisions, the Applicants fully comply with all provisions of Section 267-53.5.

Date: September 2, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 3, 2005.